mentioned laws already cover a very wide variety of undesirable elements in the country that could be dealt with under either law without resorting to the Restricted Residence Enactment. If new categories of undesirables need be created, then the legislature must create them. It is said that ignorance of the law is no excuse. On the other hand the citizen must not be kept ignorant of the law either, in particular he has a right to know what are the offences he should not commit. The continued existence of the Restricted Residence Enactment in its present form will forever provide a source of surprise to the citizen because he will not know when he will be arrested and detained for doing something which has not been declared a wrong. That, however, is for Parliament to consider.

Costs to plaintiff.

Order accordingly.

Solicitors: *Karpal Singh & Co.*

BRUNEI REPORT

JUFFERY BIN HASHIM v. PUBLIC PROSECUTOR

[A.Cr.J. (Power J.) March 30, 1985]

[Bandar Seri Begawan – Criminal Appeal No. 3 of 1985]

Public Order – Possession of offensive weapon without authority – Public Order Enactment 1982, s. 29(1).

Criminal Law and Procedure – "Charge read and explained" – What amounts to.

Dangerous Drugs – Consumption and unauthorized possession of Class A drugs – Appeal against sentences – Plea of not guilty.

The appellant was charged for consuming Class A drugs (CA2), unauthorized possession of controlled A drugs (CA3) and possession of offensive weapon without authority (CA4). He pleaded guilty to all three charges. On appeal, he appealed against sentences in CA2 and CA3 and pleaded not guilty to CA4 on the ground that he did not understand the charge and that it was never fully explained to him.

Held: (1) a defendant might well not comprehend, without a full and careful explanation, that he had not committed any offence if his reason for having the weapon was an innocent one;

(2) given the wording of the charge, the Court cannot be satisfied in circumstances where the appellant says he did not understand the charge, by virtue of the word "explained" on the record without any implication thereof, that the charge and the possible defences thereto were fully and adequately explained;

(3) taking into account the clear record of the appellant, the small amount of drugs in CA3 and the fact that the offences in CA2 and CA3 were clearly interlocked, the fine in CA3 should be reduced from $1,500 to $1,000;

(4) the appeal against sentence and conviction in CA2 is dismissed.

Case referred to:

(1) *Tan Thian Sang @ Tan Yun Guan* v. *Public Prosecutor* [1959] S.C.R. 5, 9.

CRIMINAL APPEAL.

David Clidero for the appellant.

Kiprawi Kipli (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Power J.: The appellant pleaded guilty to three charges: one of consuming Class A drugs (CA2), one of authorized possession of controlled A drugs

(CA3) and one of possession of offensive weapon without authority (CA4).

As to the last appeal (CA4), the appellant says he did not understand the charge and it was never fully explained to him. This charge was as follows:

"That you, on September 25, 1984, at about 2100 hours, at Jalan Pandan Lima A, Kuala Belait, Negara Brunei Darussalam, being a Public Place, did have under your control an offensive weapon, to wit, 33 inches of Samurai Sword otherwise than with lawful authority or solely for a lawful purpose, and that you have thereby committed an offence under Section 29(1) of the Public Order Enactment, 1982 and punishable under the same.

In this regard, the Public Prosecutor relies on statement in the record which says "Charge read and explained" and says the charge is a simple one which could be easily understood.

Reference was made to *Tan Thian Sang @ Tan Yun Guan* v. *Public Prosecutor*[1] at page 9, where Briggs J. said:

"The record in this case discloses nothing to show that there was any mistake. The learned magistrate states that the charge was read and explained to the accused in Hokkien: a plea of guilty was recorded and a short summary of the very simple facts was then given by the police."

I take no issue with that statement but do note that the Court was dealing in that appeal with a simple charge which, on its face, if properly translated, would be readily understood by any person of ordinary intelligence.

The Public Prosecutor submits that the charge in the present appeal is also a simple one. I cannot agree. In my view, without a full explanation, a defendant might well not comprehend the charge. A defendant might well not comprehend, without a full and careful explanation, that he had not committed any offence if his reason for having the weapon was an innocent one. Given the wording of the charge, I cannot be satisfied, in circumstances where the appellant says that he did not understand the charge, by virtue of the word "explained" on the record without any implication thereof, that the charge and the possible defences thereto were fully and adequately explained.

Further, the Public Prosecutor has not sought to contest the statement of the accused that he did not understand or to put before the Court affidavit evidence of what transpired when the plea was taken. In the circumstances, I am satisfied that I must allow the defendant to enter a Plea of Not Guilty and order that the matter be sent back to be heard by another magistrate.

The only other matters to be dealt with are the appeals against sentences in CA2 and CA3. The appellant was fined $1,000 in CA2 and $1,500 in CA3. Taking into account the clear record of the appellant, the small amount of drugs in CA3 and the fact that the offences in CA2 and CA3 were clearly interlocked, I am satisfied that the fine in CA3 should be reduced from $1,500 to $1,000. The appeal against sentence and conviction in CA2 is dismissed.

Order accordingly.

Solicitors: *David Clidero & Co.*